IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kanti Lal. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 619/2006

and

Dharamveer Mewara. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.282/2006

Date of Order: August 03, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani and Mr. Pradeep Shah, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Both these criminal miscellaneous petitions under Section 482 Cr.P.C. are directed against the order dated 14.2.2006 passed by the Additional Sessions Judge, Bali, district Pali (for short, "the Revisional Court" hereinafter), whereby the revision petitions No.29/2004 and 35/2004 filed by petitioners Kanti Lal and Dharamveer Mewara, respectively, against the order dated 11.8.2004 passed by the Additional Chief Judicial Magistrate, Bali (for short, "the trial Court" hereinafter) have been dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Perused the orders passed by the trial Court as well as the Revisional Court.

It appears that petitioner Kanti Lal earlier filed S.B. Criminal Miscellaneous Petition No. 320/2003 before this Court against the order framing the charge and while allowing the miscellaneous petition vide order dated 23-2-2004, this Court remanded the matter to the trial Court to re-hear the petitioner on the point of framing the charge keeping in view the order of the Assistant Registrar, Co-operative Societies dated 26-2-1990 and to pass fresh order. In compliance of the order of this Court, the trial Court, vide order dated 11-8-2004 came to the conclusion that prima facie there is ground to presume that the petitioner committed the offences under Sections 408., 467, 468, 471, 201 and 120-B, IPC. The order of the trial Court is well-reasoned and elaborate taking into account every material available on record. On the revision, the Revisional Court did not find any error in the order of the trial Court. In my view, the trial Court was justified in framing the charges on the basis of material placed before it.

In State of Orissa Vs. Debendra Nath Padhi, JT 2004 (10) SC 303, a Three Judge Bench of the Hon'ble Supreme Court held that at the time of framing the charge or taking the cognizance, the accused has no right to produce any material.

The Hon'ble Apex Court further held that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:-

> "At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing the charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

Keeping in view the Three Judge decision of the Hon'ble Supreme Court in State of Orissa Vs. Debendra Nath Padhi (supra) and the fact that both the Courts below concurrently found that there is sufficient ground to presume that the petitioners committed the offences, for which the charges have been framed, in my view, both the Courts below were justified in passing the orders impugned. It cannot be said that the orders impugned would result in serious miscarriage of justice or abuse of process of the Court.

Both the criminal miscellaneous petitions are, therefore, dismissed.

(H.R. PANWAR), J.

mcs